

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 11, 2025

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER LEON SMITH,

Petitioner,

v.

CUS ADAMS and ROB JACKSON,

Respondents.

NO: 2:25-CV-0153-TOR

ORDER DISMISSING ACTION

Petitioner, a prisoner at the Washington State Penitentiary, submitted this *pro se* Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 on May 12, 2025. ECF No. 1. He has paid the \$5.00 filing fee. Respondents have not been served.

As an initial matter, 28 U.S.C. § 2254 would be the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment, even when the petitioner is not challenging his underlying state court conviction. *White v. Lambert*, 370 F.3d 1002, 1009-10 (9th Cir. 2004), overruled on other grounds by *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc), overruled

1 on other grounds by *Swarthout v. Cooke*, 562 U.S. 216 (2011). Even if brought  
2 under § 2254, however, this petition does not challenge a harm that falls within “the  
3 core of habeas corpus.” *See Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016).  
4 Petitioner does not seek his “immediate or more speedy release” from confinement.  
5 *See Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973). Therefore, for the reasons set  
6 forth below, the petition will be dismissed.

7 Petitioner indicates that he is serving a 2009 Pierce County sentence. ECF  
8 No. 1 at 1. Nevertheless, his allegations challenge the conditions of his confinement,  
9 rather than his conviction and sentence. As relief he requests his “release” to BAR  
10 units or to a facility where his diabetes can be regulated, and the restoration of  
11 privileges. *Id.* at 7. He also seeks unspecified monetary damages and to enjoin  
12 retaliation. *Id.* Damages, however, are not an available remedy in the federal habeas  
13 corpus context. *See Nelson v. Campbell*, 541 U.S. 637, 646 (2004) (noting that  
14 “damages are not an available habeas remedy”).

15 Petitioner asserts, “after serving pending houseing review no privileges, no  
16 recreation A.D.A. Diedbeatis violation no walker, molding cell, no realease to BAR  
17 units or transfer. I have Diedbeatis low imune system.” *Id.* at 1 (as written in  
18 original). He seems to challenge the diabetic care he is receiving, claiming it is in  
19 retaliation for a lawsuit he filed asserting hazardous living conditions. *Id.* at 2. He  
20 claims that the Unit Supervisor, C.U.S. Adams, “allowed no level no privileges no

1 A.D.A. rights to regulate exercise in yard with my walker.” *Id.* He asserts that since  
2 April 22, 2025, he has received no response. *Id.*

3 By this action, Plaintiff asserts hazardous living conditions, including the  
4 presence of black mold in his cell, although he also indicates his A.D.A. cell was  
5 “bleached” on April 25, 2025, and he filed a grievance. *Id.* at 6. Petitioner declares  
6 that he is an insulin-dependent, type 2 diabetic. *Id.* He claims that since his “arrival”  
7 on April 22, 2025, he has not been given his morning insulin injections until after  
8 8:30, and he has not been allowed to use his walker to regulate his diabetes. *Id.* He  
9 indicates that the walker has been “put in my property.” *Id.* He contends that CUS  
10 Adams refuses to allow Petitioner to participate in programs and services. *Id.* at 7.  
11 Attachments to the petition indicate that Petitioner was placed in administrative  
12 segregation for fighting on March 18, 2025. *Id.* at 9-10.

13 Petitioner is challenging the conditions of his confinement, rather than the  
14 duration of his confinement. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991).  
15 Therefore, a habeas corpus petition is not the appropriate mechanism for bringing  
16 his claims. A “challenge [to] disciplinary procedures having only a speculative or  
17 incidental effect on the length of [prisoner’s] sentence” is not “close to the core of  
18 habeas corpus,” and is cognizable under section 1983. *Sisk v. CSO Branch*, 974 F.2d  
19 116, 117 18 (9th Cir. 1992) (*quotations omitted*).

1 Because Petitioner is not challenging his conviction or sentence, his proper  
2 remedy lies in an action under 42 U.S.C. § 1983. *See Sisk*, 974 F.2d at 117. The  
3 Court, however, will not convert Petitioner’s action into an action under 42 U.S.C.  
4 § 1983 for the reasons that follow.

5 There are substantial differences in the filing fees owed in habeas actions and  
6 in civil rights actions. *See* 28 U.S.C. § 1914(a). Habeas and § 1983 claims are  
7 subject to different exhaustion requirements and a litigant’s failure to properly  
8 exhaust a § 1983 claim could result in dismissal. *See Nettles*, 830 F.3d at 932 n. 8  
9 (“The procedural requirements imposed by AEDPA and the PLRA are distinct in  
10 substantial respects.”).

11 In addition, § 1983 claims are subject to the Prison Litigation Reform Act’s  
12 (“PLRA”) three strikes rule. *See Coleman v. Tollefson*, 575 U.S. 532, 534 (2015)  
13 (quoting 28 U.S.C. § 1915(g) and explaining “a special ‘three strikes’ provision  
14 prevents a court from affording *in forma pauperis* status where the litigant is a  
15 prisoner and he or she ‘has on 3 or more occasions, while incarcerated ..., brought  
16 an action or appeal in a court of the United States that was dismissed on the  
17 grounds that it is frivolous, malicious, or fails to state a claim upon which relief  
18 may be granted.”). Therefore, the Court will not convert this action into one under  
19 42 U.S.C. § 1983.

1 Because Petitioner's claims do not lie at "the core of habeas corpus," he may  
2 not proceed with this habeas action against the named Respondents. If Petitioner  
3 wishes to file a new and separate civil rights complaint he may do so. He will then  
4 be subject to the filing and *in forma pauperis* requirements of the PLRA.

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**


6 1. The Petition, ECF No. 1, is **SUMMARILY DISMISSED** under Rule  
7 4, Rules Governing Section 2254 Cases in the United States District  
8 Courts, but **without prejudice** to Mr. Smith filing a new and separate  
9 action under 42 U.S.C. § 1983.

10 2. The Court certifies that there is no basis upon which to issue a  
11 certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

12 The Clerk of Court is directed to enter this Order, **enter judgment**, provide  
13 copies to Petitioner, and **CLOSE** the file.

14 **DATED** June 11, 2024.



  
THOMAS O. RICE  
United States District Judge